

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA PRIORITY

C O N F I D E N T I A L STATE 218551

FOR DEPUTY ASSISTANT SECRETARY JOSEPH GRUNWALD

FOLLOWING REPEAT QUITO 6265 SENT ACTION SECSTATE 02 SEP 76

QUOTE C O N F I D E N T I A L QUITO 6265

FOR S/S-O DELIVER OPENING OF BUSINESS

E.O. 11652: GDS

TAGS: ENRG, PFOR, EI

SUBJECT: GOE CALLS GULF'S BLUFF

REF: (A) STATE 216027

1. BEGIN SUMMARY: THE GOVERNMENT OF ECUADOR INFORMED ME THIS AFTERNOON THAT IT TODAY HAS GIVEN GULF A 30-DAY NOTICE THAT IT MUST PAY UP THE WITHHELD DEPOSITS OR BE SUBJECT TO "CADUCITY". I WAS TOLD THAT ECUADOREAN LAW PROVIDES THAT IN THE CASE OF CADUCITY THE OFFENDING FIRM MUST FOREFIT TO THE GOVERNMENT ALL OF ITS ASSETS WITHOUT INDEMNIFICATION. IF GULF PAYS THE OUTSTANDING DEPOSITS WITHIN THE 30-DAY PERIOD THE GOE WILL THEN ENTER INTO NEGOTIATIONS TO BUY OUT GULF'S 37.5 PERCENT OF THE CONSORTIUM. END SUMMARY.

2. I WAS CALLED TO THE FOREIGN MINISTRY TODAY FOR A MEETING WITH THE FOREIGN MINISTER, THE MINISTER OF CONFIDENTIAL

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NATURAL RESOURCES, THE MINISTER OF FINANCE AND THE

ATTORNEY GENERAL. THE FOREIGN MINISTER BEGAN BY SAYING THAT THE ACTION OF WHICH I WAS ABOUT TO BE INFORMED REGARDING THE GULF OIL COMPANY WAS IN NO WAY INTENDED TO HARM US/ECUADOREAN RELATIONS. ON THE CONTRARY, HE SAID, IT WAS THE FIRM POLICY OF THE GOE TO MAINTAIN AND IF POSSIBLE IMPROVE THE EXISTING GOOD RELATIONS BETWEEN THE TWO COUNTRIES. HOWEVER THE GOVERNMENT HAD FOUND IT NECESSARY TO TAKE LEGAL ACTION AGAINST GULF AND BECAUSE OF THE GOE'S CONSIDERATION FOR ITS GOOD RELATIONS WITH THE UNITED STATES IT WAS INFORMING ME OFFICIALLY. THE MINISTER OF NATURAL RESOURCES THEN STATED THAT GULF WAS IN VIOLATION OF ECUADOREAN LAW FOR NOT HAVING DEPOSITED SOME 29 MILLION DOLLARS DUE FOR CARGOES THAT IT HAD ALREADY LIFTED. IN SPITE OF THE GOVERNMENT'S ATTEMPT TO RESOLVE ITS PROBLEMS WITH GULF, THE COMPANY HAD PERSISTED IN FLOUTING THE LAW. THEREFORE, THE GOE WAS TODAY OFFICIALLY INFORMING GULF THAT IT HAD 30 DAYS WITHIN WHICH TO MAKE GOOD ON THE OVERDUE DEPOSITS OR FACE CADUCITY (CADUCIDAD), WHICH UNDER ECUADOREAN LAW PROVIDES THAT A COMPANY VIOLATING THE LAW MAY BE PENALIZED BY HAVING ITS PROPERTY SEIZED BY THE GOVERNMENT WITHOUT INDEMNIFICATION. IT WAS THE GOE'S HOPE TO BE ABLE TO AVOID CADUCITY, HOWEVER, AND TO BUY OUT GULF'S 37.5 PERCENT SHARE OF THE CONSORTIUM. THEREFORE, IF GULF MADE GOOD THE OVERDUE DEPOSITS WITHIN THE 30-DAY PERIOD THE GOE WOULD IMMEDIATELY ENTER INTO NEGOTIATIONS TO PURCHASE GULF'S SHARE.

3. I THANKED THE FOREIGN MINISTER FOR THE CONSIDERATION THE GOE WAS SHOWING FOR ITS RELATIONS WITH THE USG BY INFORMING ME OFFICIALLY OF THE ACTION IT WAS TAKING REGARDING AN AMERICAN-OWNED COMPANY. I WENT ON TO SAY THAT IT WAS NOT MY ROLE TO ATTEMPT TO COMMENT ON THE MERITS OF THE ACTION THAT THE GOE WAS TAKING, INASMUCH AS THIS WAS A MATTER FOR DECISION WITHIN ITS SOVEREIGN POWERS AND RELATED TO A QUESTION REGARDING ECUADOREAN LAW. HOWEVER, I WISHED TO STATE THE USG VIEW THAT UNDER INTERNATIONAL LAW WHEN A COMPANY IS EXPROPRIATED IT IS DUE PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION. I SAID IN MAKING THE POINT I WAS IN NO WAY ATTEMPTING TO PREJUDGE THE CONNECTION BETWEEN THE ACTION THE GOE WAS CONFIDENTIAL

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TAKING AND INTERNATIONAL LAW. IN RESPONSE TO THE MINISTER'S COMMENT ABOUT THE GOE'S HOPE THAT THIS ACTION WOULD NOT HARM US-ECUADOREAN RELATIONS, I SAID THAT IT WAS MY EXPERIENCE THAT PROBLEMS OF THIS KIND SELDOM WERE WITHOUT UNFAVORABLE EFFECTS ON INTERGOVERNMENTAL RELATIONS.

4. THE MINISTER OF FINANCE THEN MADE A LENGTHY STATEMENT RECAPITULATING GULF'S ATTEMPTS TO "PRESSURE AND UNDERMINE

THE GOVERNMENT". HE REMINDED ME THAT HE HAD WARNED ME SOME WEEKS AGO THAT IF GULF CONTINUED TO VIOLATE THE LAW IT WOULD FORCE THE GOE TO TAKE ACTION THAT NO ONE REALLY DESIRED. HE RECALLED THAT HE HAD ASKED ME TO HAVE THE USG USE ITS GOOD OFFICES TO PERSUADE GULF TO MAKE GOOD THE DEPOSITS AND THAT I HAD TOLD HIM THAT WHILE I WOULD DO WHAT I COULD, THE USG DID NOT CONTROL THE POLICIES OR ACTIONS OF PRIVATE AMERICAN COMPANIES. NOW, HE SAID, HE FORESAW THAT GULF WOULD TURN TO THE USG AND PUT PRESSURE ON IT TO TAKE UP THE CUDGELS ON ITS BEHALF WITH THE GOE. I RESPONDED TR THIS LAST OBSERVATION BY STATING THAT, SHOULD GULF REQUEST THE USG TO MAKE REPRESENTATIONS ON ITS BEHALF, THE USG WOULD CONSIDER THE PARTICULAR CASE ON ITS MERITS AND THAT I WAS NOT ATTEMPTING TO PRE-JUDGE THE OUTCOME OF THAT CONSIDERATION. THE ATTORNEY GENERAL THEN EMPHASIZED THE DISTINCTION IN THE EYES OF THE GOE BETWEEN CADUCITY AND EXPROPRIATION. IN THE CASE OF THE FORMER, HE SAID, THE PENALTY WHICH THE LAW IMPOSED ON THE LAWBREAKER WAS THE FORFEITURE OF HIS ASSETS. THUS, THERE WAS NO QUESTION OF AN EX-PROPRIATION WHICH COULD GIVE RISE TO A CLAIM FOR INDEMNIFICATION. GULF'S CONTRACT INCLUDED A PROVISION THAT THE APPLICABLE ECUADOREAN LAWS WERE INCORPORATED AS PART OF THE CONTRACT. MY COMMENT ON THIS WAS TO OBSERVE THAT, SPEAKING OF THE CONTRACT, IT HAD OCCURRED TO ME WHILE THE ATTORNEY GENERAL WAS SPEAKING THAT THERE ARE TWO PARTIES TO A CONTRACT EACH OF WHOM MAY ALLEGE THAT THE OTHER HAS FAILED TO LIVE UP TO ITS TERMS.

5. I ASKED THE MINISTER OF NATURAL RESOURCES WHETHER, SHOULD GULF MAKE GOOD THE OUTSTANDING PAYMENTS, IT WAS NEVERTHELESS THE GOVERNMENT'S INTENTION TO BUY GULF OUT. HE RESPONDED AFFIRMATIVELY. THE MINISTER OF
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FINANCE SAID THAT THIS DECISION HAD BEEN TAKEN, NOT BECAUSE IT WAS GOE POLICY TO HAVE FOREIGN INVESTORS LEAVE ECUADOR, QUITE THE CONTRARY, BUT RATHER BECAUSE GULF HAD MADE IT PLAIN THAT IT WISHED TO BE BOUGHT OUT AT ALL COSTS.

6. RECOMMENDATION: I RECOMMEND THAT THE DEPARTMENT NOTIFY GULF OIL COMPANY THAT IF IT DOES NOT COMPLY WITH ECUADOREAN LAW BY MAKING GOOD THE OUTSTANDING PAYMENTS, THE U.S. GOVERNMENT WILL NOT BE IN ANY POSITION TO ESPOUSE A CLAIM FOR INDEMNIFICATION SHOULD ITS PROPERTY BE SEIZED UNDER THE APPLICABLE ECUADOREAN LAW REGARDING CADUCITY.

7. COMMENT: I AM CONVINCED THAT THE GOE MEANS BUSINESS AND THAT THE ONLY HOPE THAT GULF HAS OF BEING EVENTUALLY

COMPENSATED FOR ITS TOTAL NET INVESTMENT HERE IS TO MAKE
THE PAYMENTS. INCIDENTALLY, MR. LUMPKIN'S GUN HAS GONE
OFF AND IT IS MY JUDGEMENT HE HAS SUCCEEDED IN STRENGTHENING
THE POSITION OF THE MINISTER OF NATURAL RESOURCES, COL.

VARGAS, AT THE SAME TIME THAT HE HAS FURTHER WEAKENED
ADMIRAL POVEDA'S POSITION WITHIN THE GOVERNMENT.
BLOOMFIELD

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